

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Conectiv, Transferor)	
)	CC Docket No. 02-2
And)	
)	
New RC, Inc., Transferee)	
)	
For Authority to Transfer Control of Domestic)	
Section 214 Authority of Conectiv)	
Communications, Inc.)	

MEMORANDUM OPINION AND ORDER

Adopted: May 31, 2002

Released: May 31, 2002

Before the Chief, Wireline Competition Bureau:

1. In this Order, we approve the application filed by New RC, Inc. ("New RC") and Conectiv (collectively, the "Applicants") seeking Federal Communications Commission ("Commission") consent to the transfer of control of Conectiv Communications, Inc. ("CCI"), a subsidiary of Conectiv, to New RC.¹ Based on the record, we conclude that approval of the application will serve the public interest, convenience, and necessity.

2. Potomac Electric Power Company ("PEPCO"), Conectiv, and New RC have entered into a merger agreement through which PEPCO and Conectiv will become wholly-owned subsidiaries of New RC.² As a result of the merger, CCI will become an indirect subsidiary of New RC.

3. CCI currently provides non-switched interexchange telecommunications services utilizing point-to-point common carrier microwave facilities that extend from Delaware through

¹ See Application for Authority to Transfer Control of Conectiv Communications, Inc. from Conectiv to New RC, Inc., CC Docket No. 02-2 (filed Dec. 28, 2001).

² New RC, a holding company, was incorporated under the laws of Delaware on February 9, 2001. PEPCO, an electric utility, provides services to customers in Washington, D.C. and Maryland. Conectiv is a public utility holding company that owns electric utilities including the Atlantic City Electric Company and the Delmarva Power & Light Company, as well as CCI.

eastern Maryland and into northeastern Virginia. The Applicants state that these facilities are, and will continue to be, utilized extensively to provide telecommunications services. They therefore seek authority to transfer the facilities in accordance with section 214 of the Communications Act of 1934, as amended (the “Act” or the “Communications Act”).³

4. On February 12, 2002, the Commission released a Public Notice allowing for interested parties to file petitions to deny in response to the Application. Yipes Transmission, Inc. (“Yipes”) filed a petition to deny the transfer of control application on March 14, 2002 (“Petition to Deny”). Conectiv and New RC filed an opposition to the Petition to Deny on March 27, 2002 (“Opposition”). On April 19, 2002, Yipes withdrew its Petition to Deny (“Withdrawal”).

5. Pursuant to section 214(a) of the Act, we must determine whether the Applicants have demonstrated that the proposed transfer of control of CCI’s licenses and authorizations will serve the public interest, convenience, and necessity.⁴ In discharging these statutory responsibilities, we have weighed the potential public interest harms of the proposed transaction against the potential public interest benefits to ensure that, on balance, the transfer of control serves the public interest, convenience, and necessity.⁵

6. We note that only one commenter raised any arguments against the Applicants’ request for authority to transfer control. In its Petition to Deny, Yipes argued that it had not been able to gain access to poles, conduits, and other rights-of-way owned and controlled by PEPCO.⁶ Yipes claimed that PEPCO had failed to engage in good faith negotiations for such access in violation of section 224 of the Act, and that approval of the Application would allow PEPCO and New RC to further expand PEPCO’s anti-competitive practices into the geographic areas

³ Related applications filed in connection with this transaction include an application for Consent to Transfer of Control of the Common Carrier Fixed Point-To-Point Microwave Service stations licensed to CCI pursuant to Part 101 of the Commission’s Rules, and applications for Consent to Transfer of Control of the Private Land Mobile Radio Service stations and Private Operational Fixed Point-To-Point Microwave Service Stations licensed to Pepco and two other subsidiaries of Conectiv – Atlantic City Electric Company and Delmarva Power & Light Company – pursuant to Parts 90 and 101. See ULS File Nos. 0000717538, 0000721296, 0000717359, 0000717526, 0000717522, 0000717440, 0000695149.

⁴ 47 U.S.C. § 214(a).

⁵ See, e.g., *In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18030-32, paras. 9-10 (1998) (*WorldCom-MCI Order*).

⁶ Petition to Deny at 2-5. Yipes is authorized to provide competitive local exchange services in a number of states including Maryland, Virginia, New Jersey, and the District of Columbia. See Petition to Deny at 2. PEPCO owns a fifty percent interest in Starpower Communications, which provides bundled local and long distance telephone services, cable television, Internet dial-up and high speed access services to customers in the Washington, D.C. metropolitan area. See Petition to Deny at 2.

currently served by Yipes.⁷

7. In their Opposition, the Applicants argued that Yipes failed to raise significant policy questions that relate to their section 214 application.⁸ They submitted that Yipes did not establish a foundation supporting the suggestion that PEPCO engaged in systematic anti-competitive or discriminatory behavior.⁹ In addition, the Applicants argued that there is no support for the suggestion that CCI will engage in activities inconsistent with section 224 as a result of the proposed merger.¹⁰ Applicants further suggested that Yipes' concerns regarding access to utility poles and underground infrastructure would more appropriately be brought before the Public Service Commission of the District of Columbia, or pursuant to a pole attachment complaint properly filed before the Commission.¹¹

8. Since the close of the comment period, Yipes held discussions with PEPCO relating to the issues and concerns raised in its Petition to Deny.¹² As a result of these discussions, Yipes withdrew its petition. Yipes confirms, in its Withdrawal, that the "issues and concerns underlying its Petition to Deny have been addressed and resolved in a satisfactory fashion." As such, it withdrew its Petition to Deny and all objection to the Application for Consent to Transfer Control submitted by Conectiv and New RC, Inc.¹³

9. Upon consideration of the record, and in the absence of any remaining objections, we find that the proposed transfer is unlikely to result in harm to competition in any relevant market. There is no evidence that either Applicant has violated Commission rules or policies, or that the proposed transfer of control will result in harm to the public interest. In addition, we find that in the absence of competitive concerns, the public interest would be served by allowing the Applicants to continue to provide the telecommunications services currently provided by CCI. Accordingly, we find that grant of the Application is in the public interest.

ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, that the petition to deny filed by Yipes Transmission, Inc. IS DISMISSED.

⁷ Petition to Deny at 4-6.

⁸ Opposition at 2-3, 6.

⁹ Opposition at 2-3, 7.

¹⁰ Opposition at 2-3, 7.

¹¹ Opposition at 3-5.

¹² Withdrawal at 2.

¹³ Withdrawal at 2.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 214(a) and (c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214(a), and 214(c), that the application for transfer of control of the domestic 214 authorization filed by Conectiv and New RC, Inc., in the above captioned proceeding IS GRANTED.

12. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release in accordance with 47 C.F.R. § 1.103.

13. IT IS FURTHER ORDERED that this action is taken under delegated authority pursuant to 47 C.F.R. §§ 0.91 and 0.291.

FEDERAL COMMUNICATIONS COMMISSION

Dorothy T. Attwood
Chief, Wireline Competition Bureau